

# HFMWEEK

SPECIAL REPORT

## BERMUDA 2014

### COLLABORATION

How regulatory bodies and firms are transforming the industry

### ENVIRONMENT

Putting Bermuda back on the asset management map

### STRATEGY

The rise in alternative investments on the island



**FEATURING** Appleby // Bermuda Monetary Authority // Bermuda Stock Exchange // Cox Hallett Wilkinson // Ernst & Young // ISIS Fund Services // PricewaterhouseCoopers // SS&C



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# T

here is a buzz about Bermuda right now and here's why: in May of 2013 we did something radical - we asked a dozen New York investment fund lawyers for candour regarding Bermuda's

ability to serve the funds industry. Of course, getting brutal candour from a New York lawyer is not radical; acting upon it, however, is.

We were advised that we needed to be more aggressive, more innovative, more visible and, frankly, more competitive.

From the 30-31 May summit in 2013, we made significant changes to the Investment Funds Act, had the amendments passed through both houses of our parliament and effected into law in early October 2013.

We created streamlined exempted fund products and essentially introduced the concept of "accredited investors" into Bermuda's funds legislation.

Qualified new and existing investment funds organised in Bermuda now have the option to register with the BMA in one of two new exempted fund categories: Class A or Class B Exempt Funds.

The new Class A Exempt Funds represent a significant innovation in the offshore fund space as these funds can essentially be established and launched within one business day and require no Bermuda regulatory pre-approvals. Documentation is minimal, with the BMA's regulatory focus being on self-certification by the fund operator and the delivery of an offering memorandum.

Rather than a "one-size-fits-all" approach to regulation, Bermuda offers tailored products and

solutions designed to meet the needs of today's sophisticated fund industry.

Bermuda has never been about cookie cutter or quantity. We have always been, and we continue to position ourselves at a higher level of sophistication, complexity, compliance and calibre.

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We have a very collaborative private-public partnership and we work together to provide the platform for financial solutions. The BDA, the BMA, the BSX, the Bermuda-based banks and the service providers, alongside the Ministries of Finance, Economic Development and the Department of Immigration stand ready to assist businesses and prospective partners achieve success in, and from, Bermuda.

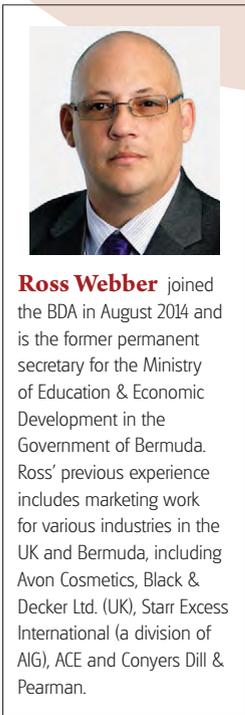
We work continuously to ensure that our diplomatic relations, laws, regulations and business ecosystem all reinforce this point.

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For more information about Bermuda, please visit [www.bermudabda.com](http://www.bermudabda.com)

**Ross D. Webber**

Chief executive officer, Bermuda Business Development Agency



**Ross Webber** joined the BDA in August 2014 and is the former permanent secretary for the Ministry of Education & Economic Development in the Government of Bermuda. Ross' previous experience includes marketing work for various industries in the UK and Bermuda, including Avon Cosmetics, Black & Decker Ltd. (UK), Starr Excess International (a division of AIG), ACE and Conyers Dill & Pearman.

## HFMWEEK

Published by Pageant Media Ltd  
**LONDON**

Third Floor, Thavies Inn House, 3-4 Holborn  
Circus, London, EC1N 2HA  
T +44 (0) 20 7832 6500

**NEW YORK**

1441 Broadway, Suite 3024, New York, NY 10018  
T +1 (212) 268 4919

**REPORT EDITOR** Karolina Kaminska T: +44 (0) 20 7832 6654 [k.kaminska@pageantmedia.com](mailto:k.kaminska@pageantmedia.com) **STAFF WRITER** Chris Matthews T: +44 (0) 20 7832 6656 [c.matthews@pageantmedia.com](mailto:c.matthews@pageantmedia.com) **GROUP HEAD OF CONTENT** Gwyn Roberts T: +44 (0) 20 7832 6623 [g.roberts@pageantmedia.com](mailto:g.roberts@pageantmedia.com) **HEAD OF PRODUCTION** Claudia Honerjager **SUB-EDITORS** Rachel Kurzfield, Eleanor Stanley, Luke Tuchscherer **GROUP COMMERCIAL MANAGER** Lucy Churchill T: +44 (0) 20 7832 6615 [lchurchill@hfmweek.com](mailto:lchurchill@hfmweek.com) **SENIOR PUBLISHING ACCOUNT MANAGER** Tara Nolan +44 (0) 20 7832 6612, [t.nolan@hfmweek.com](mailto:t.nolan@hfmweek.com) **PUBLISHING ACCOUNT MANAGER** Joakim (Joe) Nilsson T: +44 (0) 20 7832 6616 [j.nilsson@hfmweek.com](mailto:j.nilsson@hfmweek.com) **PUBLISHING ACCOUNT MANAGER** Jack Duddy T: +44 (0) 20 7832 6631 [j.duddy@hfmweek.com](mailto:j.duddy@hfmweek.com) **CONTENT SALES** Tel: +44 (0) 20 7832 6511 [sales@hfmweek.com](mailto:sales@hfmweek.com) **CIRCULATION MANAGER** Fay Muddle T: +44 (0) 20 7832 6524 [f.muddle@pageantmedia.com](mailto:f.muddle@pageantmedia.com) **CEO** Charlie Kerr

HFMWeek is published weekly by Pageant Media Ltd ISSN 1748-5894 Printed by The Manson Group © 2014 all rights reserved. No part of this publication may be reproduced or used without the prior permission from the publisher





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# A JURISDICTION REJUVENATED

RYAN OSWALD AND JESSEL MENDES OF EY BERMUDA DISCUSS THE REJUVENATION OF THE ASSET MANAGEMENT INDUSTRY ON THE ISLAND



**Ryan Oswald** is a partner in EY's Financial Services Office, and is based in Bermuda. He has more than 15 years of experience in the financial services industry serving a variety of asset management and banking clients. Industry exposure includes domestic and offshore hedge funds, fund-of-funds, private equity funds; SEC, and CIMA registrants as well as various management companies.



**Jessel Mendes** is a partner in EY's Financial Services Office, and is based in Bermuda. He has more than 16 years of experience in the hedge fund industry and has worked extensively with numerous investment vehicles in the onshore and offshore markets. Mendes is the engagement partner on many of EY's larger hedge fund audits falling under US, Canadian and international reporting requirements.

**T**he global hedge fund industry is changing at a rapid pace. Markets have evolved significantly since the difficulties of 2008. The pressure on fund managers to outperform their indices and reduce fees and costs (including long-standing management and performance fee structures), while at the same time keep up with ever increasing regulatory requirements, has made for one of the most challenging times to be in the business. As a large global professional services firm with a strong financial services focus, EY has been working very closely with our asset management clients over the past several years to address the most significant industry topics, including Fatca, the AIFMD, cyber security and corporate governance. Bermuda has not been immune to such challenges.

In the 1990s, Bermuda was seen as one of the premiere destinations for the offshore hedge fund industry, with abundant asset managers, administrators and new fund start-ups. But as the industry expanded across the world in the early 2000s and alternative jurisdictions entered the market, the island struggled to stay ahead. Fast forward to 2014, and conditions in Bermuda are improving.

We believe that the changes in the industry will continue to provide opportunities for fund managers and service providers who are responsive to the needs of their stakeholders and can be agile and innovative. Despite challenges, there is more money flowing into hedge funds and private equity now than ever before. With interest rates continuing to hover at all-time lows, the appetite for alternative structures remains strong around the world. EY has a long history of supporting entrepreneurial growth, and we do a lot of work with start-up funds to help chart their journey from the very beginning. Bermuda is a prime market for capitalising on these industry changes, and we are witnessing first-hand a renewed confidence flowing back to Bermuda.

## REJUVENATION – A COLLABORATIVE APPROACH

One of the difficulties that the asset management industry in Bermuda faced in the past was the perception that it was overly bureaucratic and suffered from a lack of a coherent, consistent message from the industry, authorities and government bodies. Fortunately, this has changed dramatically. The vision is clear, and all understand the positive

impact the asset management industry can have on our local economy. It is encouraging to see the changes that have been made resonating within the market.

The Bermuda Monetary Authority (BMA) – the island's regulator – has been a key factor in the transformation, and they understand the importance of creating an environment that protects investors without jeopardising entrepreneurial spirit. Bermuda has an outstanding reputation as a world-class financial centre, and the BMA has a great deal to do with that. The BMA, like others on the island, has demonstrated a great willingness to engage directly in conversations with all parties, including new potential investors to the island, which has proven to be very beneficial.

The Bermuda Business Development Agency (BDA), formed for the purpose of ensuring that business development efforts across the financial sector have a common

strategic direction, was instrumental in the formation of an asset management focus group comprised of representatives from the BDA, accounting firms (including EY), administrators, asset managers, and law firms. This group set out to ask the hard questions about where the jurisdiction was headed, and how Bermuda could re-emerge as a leader in the asset management industry. As an example, in May 2013, the group invited approximately 15 lawyers from major onshore hedge fund law firms to Bermuda for a think-tank on how the island could once again recapture its status as a premiere asset

management jurisdiction. The feedback was honest and eye-opening, but just what we all needed to hear. All of the participants supported Bermuda as a viable option for them and their clients.

One of the suggestions brought forth was that Bermuda should develop a solution for funds to be launched on a fast-track basis that would be strategically different from those offered in competing jurisdictions. The group listened, worked cohesively with industry, government and regulatory authorities, and had legislation in place by October 2013. Hosting a think-tank in Bermuda, developing legislation in five months, and cohesively teaming are all examples of the new asset management mind-set in Bermuda.

We have also changed the paradigm by encouraging competing professional services firms to work alongside one another for the betterment of all. Today, onshore in-

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PACK  
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vestors no longer believe they are being sold on particular firms, but rather on the island as a whole. This collaborative approach both among industry authorities and between firms working together to improve the jurisdiction, is unprecedented. The benefits to business have started to come organically, as Bermuda has increasingly developed a reputation as a centre of asset management innovation.

The BDA and the asset management focus group continue to work collaboratively. The wheels are turning, and there is no complacency among stakeholders in the industry. Authorities and firms alike are now looking at next steps and ways in which they can further develop the jurisdiction. Moreover, while the dialogue with the onshore legal community continues, the group has also reached out to onshore asset managers and institutional investors. As asset managers and investors consider the island as a potential destination, the fact that they can easily access the BMA, government and industry participants proves that Bermuda can actually be a one-stop shop domicile for all their needs.

#### INDUSTRY GROWTH

Access to capital is another major advantage in Bermuda. The island ranks among the top three reinsurance markets globally. We are seeing major onshore hedge fund manag-

ers launching reinsurance companies, local reinsurance companies launching asset management divisions targeting fund investors, and asset managers launching funds with insurance-linked strategies. Today, long-standing Bermuda firms have been joined by a relatively new group of asset managers who are using insurance-linked and other alternative strategies to raise and manage capital to provide non-correlated returns. These companies have a real on-the-ground presence. They are expanding their footprint in Bermuda using local product and service providers and, in many cases, have very substantial assets under management.

Further, the Bermuda Stock Exchange is a major advantage for the jurisdiction, with its solid reputation and potential for future listing opportunities for investment funds.

#### TALENT AND ISLAND APPEAL

From a talent perspective, Bermuda boasts a deep pool across all sectors of the industry. There is nothing preventing a firm from launching a fund, having it managed, administered, audited, listed and regulated in Bermuda. There are also a number of excellent choices for local directors.

Recent acquisitions of smaller local fund administrators by larger multinational shops will continue to diversify the administration landscape, while benefiting and rejuvenating Bermuda's investment ecosystem. These investments

should further heighten the industry's confidence.

Subject to certain criteria, Bermuda's immigration laws allow foreign investors to adopt a long-term view, giving them time to see a return on their investment, while also looking out for their dependents. The island's concierge service helps interested foreign investors with their professional needs by introducing them to service providers, infrastructure and office space. From a personal standpoint, it also helps them determine their best housing and school options, while introducing them to the many amenities Bermuda has to offer.

Another factor in the market's strong appeal is its close proximity to the US. Bermuda is less than two hours from New York and the East Coast and in a business-friendly time zone. Having ease of access to the world's leading financial markets, as well as daily flights to New York, London and Toronto, is another important factor for funds to consider.

Overall, Bermuda is seeing great momentum and excitement, and EY is excited to be part of the community helping to put Bermuda back on the asset management map. While the global hedge fund community keeps changing, Bermuda is once more positioning itself in front of the pack and offering a combination of expertise, insight, and quality governance that is unrivalled in the offshore world. ■

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# LOOKING TO THE FUTURE

SCOTT WATSON-BROWN, ASSET MANAGEMENT LEADER AT PWC BERMUDA, TALKS TO *HFMWEEK* ABOUT NEW EFFORTS TO ATTRACT ASSET MANAGEMENT AND FUND BUSINESS TO BERMUDA, AND THE 'GAMECHANGERS' THAT WILL REDEFINE THE INDUSTRY.




**Scott Watson-Brown** is the Bermuda firm's asset management leader, having over 19 years of experience in public practice, including 15 years of providing specialised audit and advisory services to clients who encompass a wide variety of asset classes, including hedge, private equity and real estate funds, capital market/reinsurance convergence structures (insurance linked securities), investment advisers and other offshore investment structures.

**HFMWeek (HFM):** What strategies are being deployed to attract new business to Bermuda?

**Scott Watson-Brown (SWB):** We are continuing our focus on bringing Bermuda forward as a long-term, sustainable platform for asset managers seeking a jurisdiction that can provide an operating environment that understands and supports their needs and offers solutions.

Industry, the Bermuda government and regulators are working together in a proactive way to encourage and support international business and attract new business to Bermuda and are constantly exploring ways in which to support and improve the industry as it continues to expand and advance.

We are engaging with key participants in the industry to showcase our commitment and provision of a jurisdiction that promotes efficiency in formation of structures, effective regulation and active support in establishment of operations. This co-ordinated effort enabled Bermuda to launch a new, exempted fund structure in response to needs identified by the industry. Essentially, the industry body heard what the market needed, we reacted, spoke with the regulator and government who understood the commercial benefits and potential risks of such a product, and pushed through the legislative change process in very short order.

**HFM:** What makes Bermuda a preferred domicile?

**SWB:** Bermuda is able to offer the asset management industry viable solutions to their offshore needs.

An abundance of highly qualified and internationally trained professionals have made Bermuda a premier in-

ternational financial centre, servicing alternative managers through all stages of the lifecycle of their business, providing administrators, lawyers, auditors and directors, all supported by established precedence in the legal system and a prudent regulator.

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Bermuda maintains a strong reputation throughout the industry, while the Bermuda Monetary Authority (BMA) really has its finger on the pulse of the new regulatory requirements and maintains a view on global regulatory developments.

**HFM:** What are the opportunities for asset managers?

**SWB:** Our expertise is in a variety of investment strategies, structures and products, with a focus on hedge funds, private equity funds (including VC and real estate) and insurance-linked securities (ILS). Bermuda continues to

lead the world in convergence strategies and I think it is just another example of how Bermuda can facilitate the latest alternative strategies.

If hedge fund managers want to access a strategy that has a particular structure or need, then I think Bermuda has shown itself to be a leading jurisdiction for accommodating those different structural needs; ILS structures represent just one of the areas where Bermuda is particularly strong.

Bermuda offers real flexibility with regards to the type of alternative structures that are available and how they can be utilised by asset managers. As ILS has become increasingly popular and mainstream within the industry, it won't take long before a new trend in alternative structures emerge and Bermuda will undoubtedly be at the forefront of any new developments.

With the continued communication and understanding from the industry bodies in Bermuda it is easy to have open and progressive dialogue on new developments; this is only going to further benefit the industry over the coming years.

**HFM: What are some of the pressures the asset management industry is facing today?**

**SWB:** The asset management industry stands on the edge of a number of fundamental shifts that will shape its future. With the global financial crisis barely behind them, most asset managers have afforded themselves little time to bring the future into focus. Yet the way in which many of them will operate in 2020 will be significantly different than today.

Alongside rising assets, there will be rising costs. Firstly, the costs of complying with regulation will remain high. Commercial cost pressures will rise as firms grow their distribution networks. Fees will be under continued pressure amid the ongoing push for greater transparency and comparability.

Investment in technology and data management will need to be maintained or increased to maximise distribution opportunities and to cope with regulation, reporting and any unknown that lies over the horizon. Full transparency over investment activity and products will exist at all levels in the future and it is up to asset managers to take the changes on board and put practices in place that deal with them accordingly.

The coming years will bring the industry higher volumes of assets than ever before which will place more responsibility on firms to manage these assets to the best of their collective ability. Asset managers must clearly outline the value they bring to customers while being fully transparent over fees and costs.

**HFM: What are some of the 'gamechangers' that will redefine the industry?**

**SWB:** Released earlier this year, PWC's *Asset Management 2020: A Brave New World* report – which compiled data from over two years – explores some of the 'mega-trends' which are likely to impact the industry over the coming years.



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From shifting landscapes and the emergence of new, powerful territories and the inevitable changes to fee models, to a growing technological importance, the asset management landscape is going to look very different in the future.

- Asset management, long in the shadows of its cousins in the banking and insurance industries, will move centre stage.
- Distribution is being redrawn. By 2020, four distinct regional fund distribution blocks will have formed which will allow products to be sold pan-regionally and this is something which asset managers are going to have to be alive to and have the ability to transcend different markets. These are: North Asia, South Asia, Latin America and Europe.
- Fee models are being transformed and with regulatory changes from Fatca to the AIFMD, individuals within the industry need to remain on top of such developments and the prospect of more regulations over the coming years.
- Alternatives will become more mainstream, passives core and ETFs will proliferate.
- A new breed of global managers will emerge, with highly streamlined platforms, targeted solutions for the customer and a stronger and more trusted brand, and will no longer be moored to a single destination but will need to have a more diverse range of operations in place.
- By 2020, technology will have become critical to drive customer engagement, data mining for information on clients and potential clients, operational efficiency and regulatory and tax reporting. In today's world, people want more information and greater levels of transparency on investments, and having a coherent and comprehensive technology solution set up is only going to become more important down the line. At the same time, cyber risk will have become one of the key risks for the industry, ranking alongside operational, market and performance risk. ■



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\*Figures shown are as at March 2014

# THE PREMIER CHOICE FOR PRIVATE EQUITY AND HYBRID VEHICLES

SARAH DEMERLING OF APPLEBY AND ISIS FUND SERVICES' SCOTT BURNS TELL *HFMWEEK* WHY BERMUDA IS THE PERFECT PLACE FOR PRIVATE EQUITY AND HYBRID VEHICLES



**Sarah Demerling**

is a partner in Appleby's Bermuda corporate & commercial practice group and a senior member of the funds & investment services team. Demerling has extensive experience in advising managers and general partners in connection with structuring, formation and day-to-day operations of investment vehicles including mutual funds, hedge funds, unit trusts, partnerships, private equity and master/feeder structures.

**F**und structures that combine a hedge fund approach to investing in liquid assets with private equity style features are growing increasingly attractive to fund managers.

The "hybrid fund" combines a traditional hedge fund investment mandate with the characteristics of a private equity fund (such as being closed-ended, a waterfall distribution of profits and a specified investment period).

In its 2013 report, JP Morgan identified the key drivers for this upswing in hybrid hedge fund vehicles as being major changes to the global credit market aligned with the growing regulatory pressures (not least the pressure on European banks following Basel III). This finding is echoed in the February 2014 report by New York-based law firm Seward & Kissel, which points to an increasing convergence between hedge funds and private equity funds, with hard lock-up periods as well as tougher redemption terms.

Forming and operating a hybrid fund, or a private equity structure, which can successfully combine a mix of asset classes and investment strategies, needs the right legal framework and knowledgeable and experienced professionals to implement it.

Bermuda's strength and breadth of private equity service providers, together with its robust yet responsive legal and regulatory environment, make it a strong choice of jurisdiction for both private equity fund formations and for the selection of service providers required to service such funds.

**EXPERIENCE IS THE DIFFERENCE**

Bermuda's history with private equity dates back to the early 1980s and 1990s. Over the past 30 years, Bermuda has developed a network of knowledgeable service providers and advisers to the private equity industry who work closely with regulators to create a world class jurisdiction for the private equity industry.

The Bermuda Monetary Authority (BMA) – the industry regulator – takes a risk-based approach to financial services regulation and has continually demonstrated a dedication to collaboration and consultation with the private equity industry, as well as with the financial services industry more broadly.

The continually changing regulatory landscape, and va-

riety and complexity of fund structures (such as the hybrid fund vehicle), has increased the value of access to highly qualified and skilled private equity professionals. The resources required to attract, train and retain highly qualified industry professionals have increased as the value associated with this expertise has intensified. The outsourcing of private equity services is not only a benefit from a cost perspective, but also provides the private equity managers with access to staff with wide-ranging experience across multiple clients and fund structures. Bermuda has spent 30 years developing a unique network of skilled private equity professionals and is in position to fully leverage that talent.

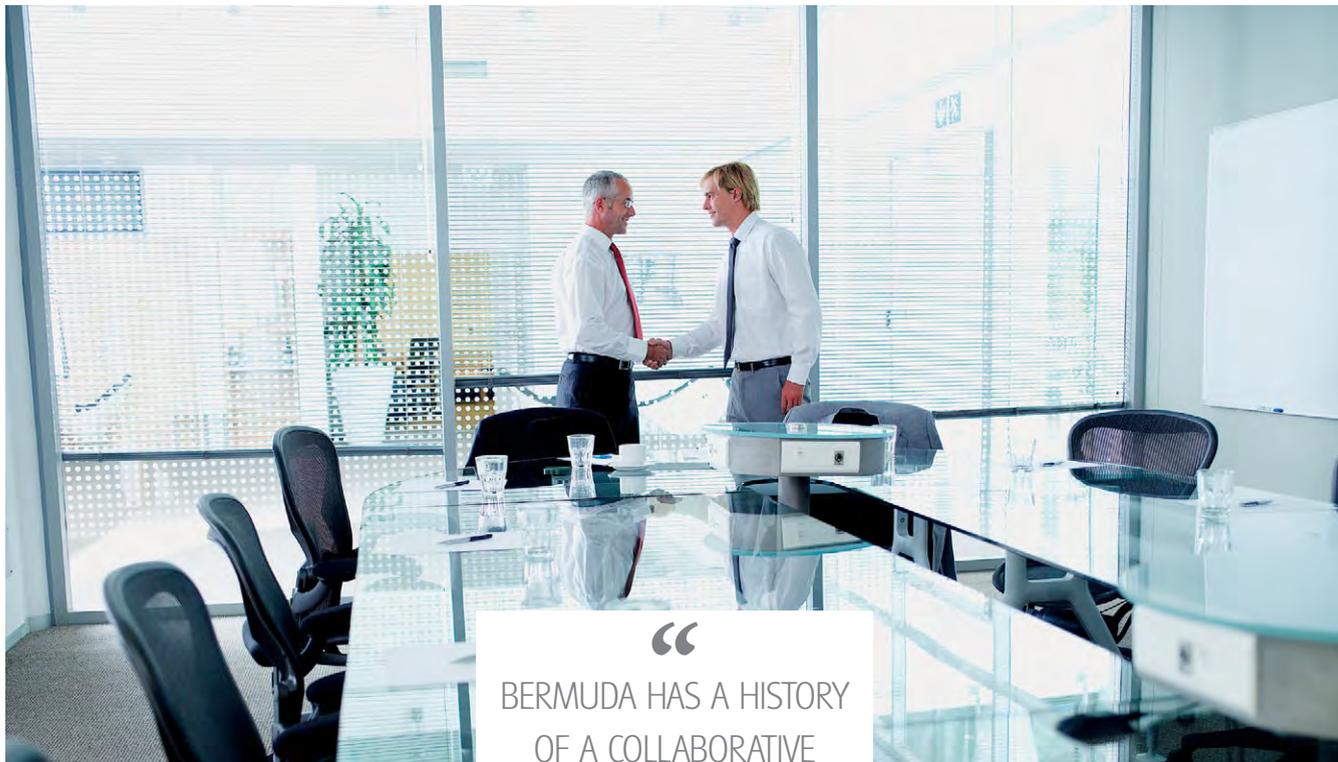
Having a service professional that has extensive expertise in private equity funds provides the general partner with a great source of guidance on industry best practices. This expertise can be leveraged by the general partner, beginning with the fund formation stages to determine reporting formats and managing subsequent close calculations, and then continually through the life of the fund to assist with distribution waterfall calculations, portfolio valuations, best practices and limited partnership agreement provision calculations, and interpretations.

Scott Burns, head of private equity services for ISIS Fund Services in Bermuda, has been servicing private equity clients from the country for close to 20 years.

He says: "One big advantage Bermuda has over other jurisdictions, is the depth of private equity experience in all areas of the service provider landscape. One reason our clients continue to choose our administration services in Bermuda is the incredible depth of experience in the law firms, accounting firms, directors and consultants. Our relationship with the staff in these other firms goes way back. For some of our clients, I worked as the fund accountant when they were formed in the late 1990s and the current audit partner was a senior on those early audits. This close proximity of such depth of private equity experience gives Bermuda a strong advantage in the selection of a private equity fund formation domicile and service provider selection."

**INDUSTRY-DRIVEN STRUCTURING OPTIONS**

Bermuda has a history of a collaborative relationship between investment industry professionals and regulatory stakeholders.



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BERMUDA HAS A HISTORY  
OF A COLLABORATIVE  
RELATIONSHIP BETWEEN  
INVESTMENT INDUSTRY  
PROFESSIONALS AND  
REGULATORY STAKEHOLDERS  
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A recent example of this successful collaboration is demonstrated in Bermuda's dominance in the insurance-linked securities (ILS) space, with close to half of all ILS stock now issued in Bermuda. Bermuda has also leveraged this alignment of a world class financial regulator and deep industry knowledge to create a very favourable structuring environment for private equity and hybrid funds.

For these closed-ended structures formed as limited partnerships, the benefits of forming it in Bermuda include less regulatory scrutiny as the partnership legislation does not look to regulate the affairs of limited partners; the general partner can be based outside of Bermuda; and a Bermuda limited partnership can elect (in a similar way to Delaware limited partnerships) to have separate legal personality.

A hybrid fund may also be formed as a Bermuda mutual fund company. Bermuda offers key advantages as a jurisdiction for establishing a fund company as the legislation (including segregated accounts legislation) allows for the creation of bespoke governance and economic arrangements within a single entity. Options exist to 'opt in' to the amount of regulation a fund requires based on its investor base. Closed-ended structures fall outside of the Investment Funds Act and therefore there are no filings, no approvals and no restrictions on the use of chosen service providers. In addition, there is no requirement under Bermuda law for local auditor sign-off.

These factors, coupled with low fees and same day incorporations, make Bermuda a superior choice as a jurisdiction for forming private equity as well as hybrid fund entities.



#### Scott Burns

is senior vice president – private equity at ISIS Fund Services, with 18 years of private equity industry experience. Burns has previously held roles as head of JP Morgan's private equity & real estate services (I.P.M. Bermuda) and head of private equity fund services for Schroders Bermuda.

Sarah Demerling, partner of Appleby (Bermuda) Limited and member of the asset management committee of the Bermuda Business Development Agency, has been working closely with the asset management industry, the BMA and the Bermuda Government to reinvigorate the industry in Bermuda.

“Bermuda is listening to the needs of the industry and responding accordingly. Bermuda's reputation and sensible balance of regulation provides investors with confidence and our current environment is very supportive of the industry as it continues to expand and evolve,” she says.

Another key incentive to forming a hybrid investment vehicle in Bermuda is the tax neutrality of the jurisdiction. There is no Bermuda income, capital gains or withholding tax, corporation or profits tax applicable to a fund or to its shareholders.

#### BERMUDA, A COMPLETE JURISDICTION FOR HYBRID FUND/ PRIVATE EQUITY VEHICLES

As the private equity industry continues to evolve due to changes driven by regulators, investors and general partners themselves, Bermuda is well positioned to be a leading choice as both a location to domicile hybrid funds, traditional private equity entities, as well as general partners and also as a leading choice for private equity professional service firms.

Bermuda has spent three decades creating a landscape tailor-made for private equity, and continues to be a responsive and innovative jurisdiction, which strives to implement new structures and products to provide solutions to the challenges which arise in the private equity arena. ■

# BERMUDA'S INVESTMENT FUND SECTOR: THE REGULATOR'S ROLE

CRAIG SWAN DISCUSSES THE BERMUDA MONETARY AUTHORITY'S ROLE AS FINANCIAL SERVICES REGULATOR AND ITS WORK IN RELATION TO THE AIFMD



## Craig Swan

As managing director, supervision, Craig Swan has strategic responsibility for all the Bermuda Monetary Authority's supervisory activities, including the supervision of banks, trust companies and investment businesses, insurance supervision, actuarial and risk analytics functions, and supervision of institutions under Bermuda's anti-money laundering regime. Swan is a certified general accountant and a fellow of the Institute of Chartered Secretaries and Administrators.

**A**s Bermuda's single independent financial services regulator, the Bermuda Monetary Authority (the Authority) applies risk-based regulatory regimes that are fit for purpose for the business conducted in and from within the jurisdiction. For the funds sector this means the Authority takes into account the nature of the market, which comprises predominantly institutional, highly sophisticated investors, and regulates them accordingly.

The primary legislation for the sector is the Investment Funds Act 2006 (the Act). Classes of funds authorised under the Act include standard, institutional, administered and specified jurisdiction funds. Standard funds are those that can include retail investors and are accordingly subjected to an increased level of statutory and reporting requirements, including the need to appoint a Bermuda-licensed fund administrator or custodian.

Institutional and administered funds are targeted at sophisticated investors, with the latter class of fund often including a stock exchange listing. The Act also allows for certain funds to be treated as exempted. This means that funds that are private in nature and which have no more than 20 investors can elect to be excluded from authorisation. Such funds must provide written notice to the Authority confirming that they qualify for exclusion.

In addition to its authorisation and exemption categories for funds, the Act also has a licensing regime for fund administrators. Under this regime, licensed fund administrators must fulfil and maintain on an ongoing basis a set of minimum requirements and are subject to a full supervisory regime including on-site inspections. This allows the Authority to review and monitor the Bermuda fund administration companies who provide some of the ongoing checks and balances of a fund's operations.

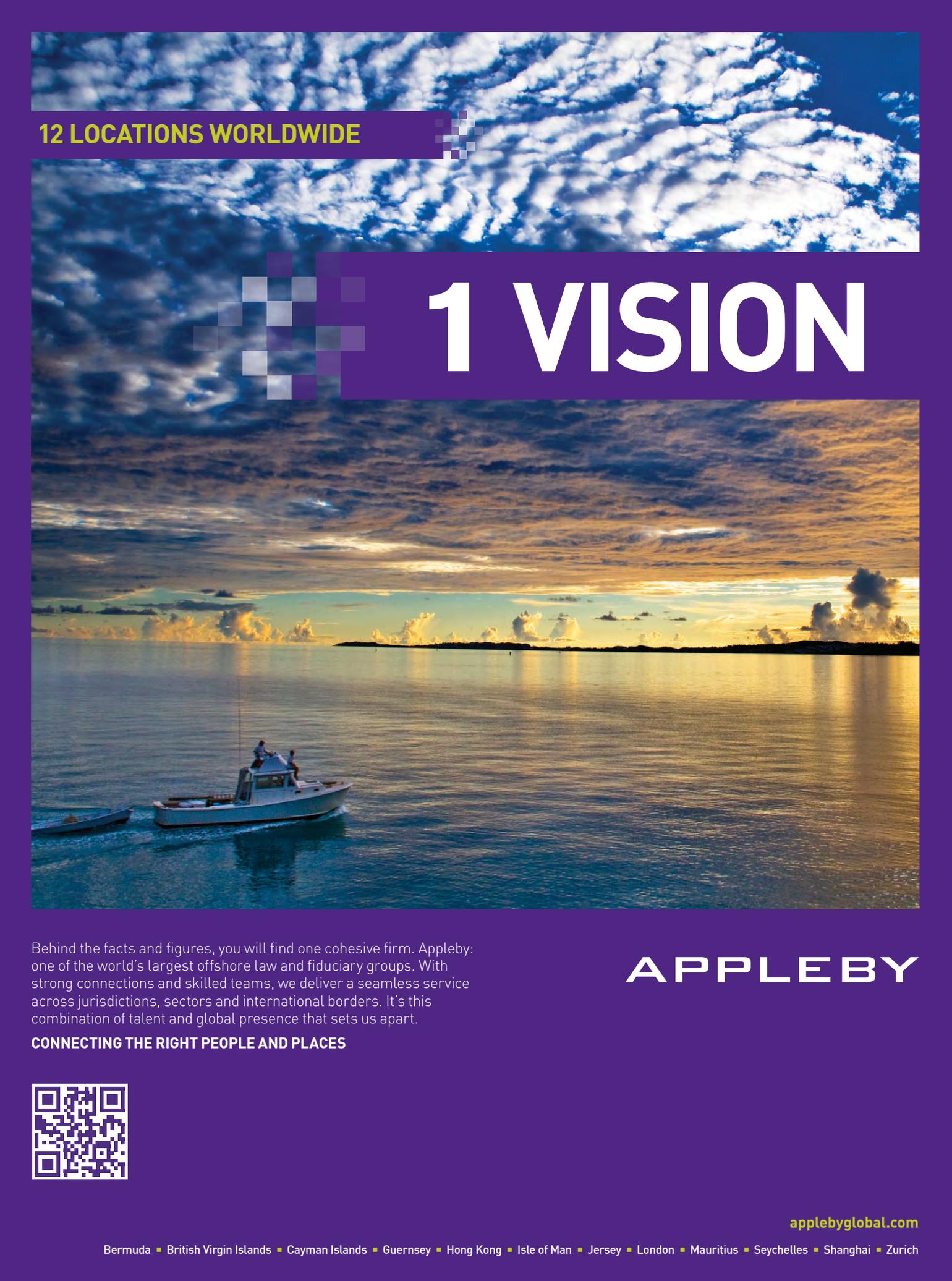
Additional elements of the funds framework include an initial thorough vetting process of prospectuses and individuals, as well as reporting requirements for all authorised funds consisting of routine statistical reports made to the Authority on a regular basis. These elements allow the Authority to intervene quickly in the event that concerns arise about the running of a particular fund.

## DEVELOPMENTS IN THE SECTOR

Through its continuous programme of enhancements, the Authority ensures Bermuda's regulatory framework remains appropriate and effective for the market, while also reflecting relevant international standards and facilitating continued business development. Recent developments in the funds sector include an amendment to the Act to facilitate two new classes of exempted funds: Class A and Class B funds. The Investment Funds Amendment Act 2013 was passed in September 2013 following extensive consultation with stakeholders both in Bermuda and overseas. The Amendment Act repealed the previous provision on exempted funds to introduce the new classes of funds. The addition of the new classes provides accelerated speed to market for funds that meet specific criteria and supports Bermuda's position as a competitive jurisdiction in the global funds sector.

An additional development involves work related to compliance with Europe's Alternative Investment Fund Managers Directive (AIFMD), which establishes a regulatory regime for European managers of alternative investment funds. The Authority signed co-operation agreements with European Union (EU) member states in relation to the AIFMD in July 2013. This ensures Bermuda-based funds and fund managers who want to conduct business in Europe are not disadvantaged from a regulatory perspective. It also means that Bermuda can continue to provide significant benefits for new and existing funds and fund managers seeking to access the European market, while also servicing those looking to operate in non-EU markets.

Signing the co-operation agreements completed the first phase of the Authority's AIFMD-related initiative. The next phase is currently underway and involves assessing the merits of establishing an opt-in regime to comply with the full requirements of the Directive and to facilitate implementation of the passporting option when it becomes available to third countries in 2015. The Authority's goal with establishing an opt-in regime is to allow Bermuda-based AIFMs the opportunity to continue operations in the EU by maintaining full access to the European market. The addition of an opt-in regime would also mean that Bermuda can accommodate a full spectrum of fund-related activity for the market within an internationally recognised regulatory framework. ■



12 LOCATIONS WORLDWIDE

1 VISION

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# BERMUDA: THE SPACE TO WATCH

ANDREA MONIZ-DESOUZA OF COX HALLETT WILKINSON LIMITED DISCUSSES THE REGULATORY CHANGES BROUGHT IN BY THE INVESTMENT FUNDS AMENDMENT ACT 2013



**Andrea Moniz-DeSouza**

is an associate in CHW's corporate and commercial department. She advises Bermuda-based and international clients on a range of corporate and commercial matters. She has particular expertise in the establishment of investment vehicles, including issues relating to structuring and operating investment vehicles, corporate governance and regulatory compliance.

**HFMWeek (HFM):** What have been the biggest changes facing Bermuda's funds industry and how responsive is the funds industry in meeting investor requirements?

**Andrea Moniz-DeSouza (AMD):** Over the years, the funds industry in Bermuda has encountered and has had to deal with many changes in the funds arena. Bermuda went from being one of the most popular jurisdictions to a jurisdiction not always considered due to the high level of competition it faced from other jurisdictions, which evolved as the popular jurisdictions of the day. The Bermuda funds industry however persevered through these difficulties and is now more than ever on the verge of re-emerging as a player in the funds business.

In May 2013, Bermuda reached out to onshore industry professionals asking why Bermuda was being passed over in favour of its competitors. This involved high level candid discussions and extremely effective coverage of a wide variety of topics between these onshore industry professionals and not only members of the Bermuda private sector but also members of the Bermuda Government, principals of the Bermuda Monetary Authority (BMA) and the Bermuda Business Development Agency. It was evident from these meetings held in Bermuda and by the access to high level officials and co-operation between competitors in Bermuda, that the Bermuda funds industry is open for business and is united and committed about re-establishing its position in the offshore funds industry. The onshore professionals did not hold back on the reasons why Bermuda was being overlooked. They provided suggestions for Bermuda to come up with a fund product that gave them a viable option, such as developing a product different from competing jurisdictions which allowed for a fund to be launched immediately. Bermuda listened and worked cohesively with the funds industry professionals in Bermuda, the Bermuda Government and the BMA and had legislation in place by October 2013.

**HFM:** What are the biggest regulatory changes?

**AMD:** In an initial response to the discussions with onshore industry professionals, on 4 October 2013, Bermuda passed legislation amending the Investment Funds Act 2006 (IFA) in the form of the Investment Funds Amendment Act 2013 (the Amendment) which provides for new criteria for exemption of funds from authorisation and created a new user friendly investment fund class that can be registered and launched via a streamline process. Funds can now be launched on a fast track. The Amendment repeals the existing provisions on exemption and introduces two new classes of exempt funds, Class A Exempt Funds

and Class B Exempt Funds.

Class A Exempt Funds are self-certification funds registered on the same day which allow for an immediate launch. To be eligible to have a fund qualify as a Class A Exempt Fund, a fund must:

- (a) only be open to qualified participants (high income private investors, high-net-worth private investors, sophisticated private investors, institutional investors);
- (b) have an investment manager who:
  - (i) is licensed under the Investment Business Act 2003; or
  - (ii) is authorised or licensed by a foreign regulator recognised by the BMA (e.g. the SEC); or
  - (iii) is carrying on business in or from Bermuda or a jurisdiction recognised by the BMA and who has gross assets under management in excess of \$100m or is a member of an investment management group that has consolidated gross assets under management of not less than \$100m;
- (c) operator of fund has appointed an officer, trustee, or representative that is resident in Bermuda and has access to the books and records of the fund;
- (d) operator of fund has appointed a fund administrator, registrar, auditor and a custodian or prime broker; and
- (e) financial statements are prepared in accordance with IFRS or GAAP.

For a Class A Exempt Fund, there is no BMA approval required. Instead of having to submit a formal application to the BMA, on or before the date of commencement of business, the operator of a Class A Exempt Fund is only required to submit a notification and certify to the BMA via its electronic filing system, ERICA, that it meets the requirements for Class A exemption along with filing a copy of its offering memorandum. The initial filing registration fee to register as a Class A Exempt Fund with the BMA is \$1,500.

In respect to ongoing requirements, a Class A Exempt Fund is required to certify annually to the BMA on or before 30 June that the fund satisfies the requirements for exemption and will continue to satisfy them. The Class A Exempt Fund is also required to file its audited financial statements for the preceding year and a statement of any material changes to the fund's offering memorandum. The ongoing annual registration fee with the BMA is \$1,500.

The second type of fund introduced by the Amendment is the Class B Exempt Fund, which is an option available for funds which do not qualify for Class A Exempt Fund status. To qualify as a Class B Exempt Fund, a fund must:

- (a) only be open to qualified participants;
- (b) operator of fund has appointed an officer, trustee, or representative that is resident in Bermuda and has access to the books and records of the fund;



(c) operator of fund has appointed an investment manager, fund administrator, registrar, auditor and a custodian or prime broker who are fit and proper to perform the respective functions of their office; and

(d) financial statements are prepared in accordance with IFRS or GAAP.

Operators of a Class B Exempt Fund can apply to the BMA to waive any requirement listed above, if it can satisfy that appropriate arrangements are in place to safeguard the interest of investors in the fund.

For a Class B Exempt Fund, an application must be submitted to the BMA via ERICA, which is accompanied by the fund's offering memorandum. The fund will be notified of the outcome of its application within ten days of the application date. If approval is not received by the BMA within the ten days and no request for further information is received, the BMA will be considered as having granted the exemption. The initial filing registration fee to register as a Class B Exempt Fund with the BMA is \$1,000.

In respect to ongoing requirements, a Class B Exempt Fund must certify annually to the BMA on or before 30 June that the fund satisfies the requirements for exemption and will continue to satisfy them. The Class B Exempt Fund must also file a statement of any material changes to its offering memorandum, audited financial statements for the preceding year and a schedule of any changes made to its directors and service providers. An operator of a Class B Exempt Fund cannot appoint a service provider or a director without first making a written application to the BMA requesting

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 BY ENABLING A FUND  
 TO REGISTER AND  
 LAUNCH FASTER, THE  
 AMENDMENT HAS  
 DEMONSTRATED BERMUDA'S  
 RESPONSIVENESS TO THE  
 FUNDS INDUSTRY MARKET  
 ”

their approval and receiving such approval. The ongoing annual registration fee with the BMA is \$1,000.

Operators of exempt funds are required to give notice in writing to the BMA within 14 days of becoming aware of the occurrence of a disqualifying event (e.g. no longer meeting the requirements of a certain class of exempt fund). The operator of the fund must also within 45 days of becoming aware of a disqualifying event notify the BMA in writing of the circumstances that lead to the disqualifying event and the manner and time within which it intends to rectify the default. An operator who fails to notify the BMA within either the 14-day period or the 45-day period is liable for a default fine of \$5,000 and a further fine of \$500 for every day the fund is in default.

**HFM:** What do you foresee in terms of legislative changes in Bermuda's fund industry?

**AMD:** By enabling a fund to register and launch faster, more efficiently and cost effectively, the Amendment has demonstrated Bermuda's responsiveness to the funds industry market and that it is serious in regaining its position in the funds industry. Today, Bermuda continues dialogue with the onshore community and continues developing legislation with attractive products. Its cohesive teaming are all examples of Bermuda's new mind-set towards the funds industry in Bermuda. Bermuda is the space to watch. ■

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*



# Building Fund Administration Solutions for Private Equity and Hedge Fund Managers

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**Kristin Steele - Charlotte, NC**  
ph: 704-927-1860 e: kristins@isisfunds.bm

**Scott Burns - Hamilton, Bermuda**  
ph: 441-279-2102 e: scottb@isisfunds.bm



# A CENTRE OF EXCELLENCE



**Greg Wojciechowski** is president and CEO of the Bermuda Stock Exchange (BSX). Prior to this, he was the Exchange's COO. He was responsible for developing the Exchange's regulatory and operational infrastructure and for its day-to-day operations. He is also chairman of Bermuda's Financial Intelligence Agency.

GREG WOJCIECHOWSKI TELLS *HFMWEEK* WHY BERMUDA HAS BECOME SUCH A SUCCESS IN THE ILS SPACE AND HOW THE BERMUDA STOCK EXCHANGE HAS HELPED TO CONTRIBUTE

**B**ermuda has seen year-on-year growth in the insurance-linked securities (ILS) market, which includes vehicles such as catastrophe bonds, side cars and industry loss warranties. There has also been a deepening interest in these vehicles from investors and issuers, significant growth in the number of vehicles being incorporated in Bermuda and a spike in the listing of ILS structures on the BSX.

It's been a strong year for special purpose insurer (SPI) incorporations. According to the Bermuda Monetary Authority (BMA), there have been 36 new SPIs registered in the months from January to June 2014.

As of 31 July 2014, there have been 37 new ILS vehicles listed on the Bermuda Stock Exchange at a value of \$5,601, which is already close to the 2013 year-end total of 42 listed ILS vehicles, at a value of \$4,617.

#### THE WORLD RISK CAPITAL

Bermuda's longevity and reputation in the insurance and reinsurance markets has resulted in it becoming known as

'the world risk capital'. The jurisdiction's regulatory and operating infrastructure is understood and respected globally. For years, Bermuda's insurance market has responded to market needs and trends and through an innovative and proactive approach has been able to adapt to create products and support as the market evolves. There is no better example of this than the work undertaken in Bermuda both commercially and from a regulatory perspective to create a centre of excellence for both ILS and alternative risk transfer (ART).

Realising a developing trend in the evolution of the capital formation process of traditional insurers, Bermuda was quick to respond by implementing a commercially sensible approach to the creation and listing of ILS products. Through a collaborative effort, changes were made to Bermuda's regulatory framework which clarified and commercialised the incorporation process of ILS structures.

The BSX did the same by focusing attention on creating a listing regime that met the specific needs of issuers of insurance related securities and their investors while

leveraging the BSX exchange platform for trading and operational support.

Bermuda has critical mass and a long-positioned and well-tested infrastructure that underpins the insurance and reinsurance industry. As a result, Bermuda has become the logical home for the formation and development of ILS and ART products. If you like, a cottage industry has developed here around ILS and ART. This cottage industry includes support and expertise in relation to all components of the structure, including the regulator and the investment community. The Bermuda Monetary Authority, using a risk-based approach to oversight, has been commercially sensible when designing the framework for creation and regulation of these sophisticated vehicles. Other infrastructure service providers, such as fund administrators, lawyers and accounting firms have honed their support services for the ILS asset class. Longevity in the business, some of the world's largest ILS investors, specialised and well respected support services for the ILS asset class and an internationally recognised stock exchange with a specialisation in the ILS asset class have combined to make Bermuda a centre of excellence for ILS and ART.

#### THE LEADER OF OFFSHORE EXCHANGES

The BSX has been in existence since 1971 and is a leader among offshore stock exchanges. As the only offshore exchange that is a full member of the World Federation of Stock Exchanges (since 1999), we have been focused on not only driving the development of Bermuda's domestic capital market, but also placing Bermuda within the global framework of recognised stock exchange platforms. The BSX has been operating a fully electronic trading, clearing and settlement platform since the late 1990s and actively supports all aspects of stock exchange activity for domestic and international issuers. Our regulatory framework has been designed and operates predicated on accepted international standards which seek to strike the appropriate balance between providing issuers with access to the market while providing investors with certain safeguards and with sufficient and timely information for the purpose of enabling them to make an informed decision as to the value and merits of listed securities. Our state-of-the-art electronic trading platform, based upon a central limit order book model, provides equal and fair access to all approved and BSX regulated trading members. To ensure operational efficiency, the BSX acts as the central counterparty for transactions executed on the BSX platform.

The BSX launched its NASDAQ OMX's X-stream trading platform in April 2013, providing the Exchange with world-class trading technology and strengthening its commitment to the development of Bermuda's domestic market while underscoring its ability to provide global capital market support in and from Bermuda. NASDAQ OMX technology is used by over 70 marketplaces in 50 countries. Operating with X-stream technology, the BSX is the most powerful trading venue in the Caribbean and offshore markets as defined by performance, latency and throughput.

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THE BSX IS ASSISTING  
BERMUDA TO FIRMLY  
ESTABLISH ITSELF AS A  
CENTRE OF EXCELLENCE  
FOR THE CREATION, LISTING  
AND SERVICING OF THE ILS  
ASSET CLASS  
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While other offshore exchanges are talking about implementing the system, we've already implemented it and we've already upgraded to the next generation of more robust trading technologies.

#### THE FUTURE

From a product development perspective we see the ILS sector as one with growth potential which continues to drive the convergence of the capital markets and the insurance industry. Bermuda is the intuitive and logical place for convergence to occur. Given the depth of insurance industry expertise and critical mass of key players located here coupled with the growing importance of the BSX, our regulatory framework and global acceptance and reputation all of the key ingredients are present to make Bermuda the centre of excellence for ILS.

At the BSX, we are joining our insurance colleagues in reaching out to our global clients to ensure that they are aware of our commitment to make Bermuda the centre of excellence in the ILS/ART space and to do our part in the development of the asset class. In this regard, ILS (Bermuda) Ltd. will be hosting Bermuda Convergence 2014, of which the key theme will be around innovation in ILS. We are close to announcing the event speakers for the conference, but promise that they will match the calibre of last year's speakers – including Apple co-founder Stephen Wozniak's impressive talk on the future of technology.

Bermuda Convergence 2014 will be an information and networking event for industry professionals, including reinsurers, brokers, investors, investment managers and ILS professionals. We aim to build on the success of Bermuda Convergence 2013 and offer more discussion and innovation at an exciting time for the ILS asset class.

We and our partners have been striving to promote the island through a variety of avenues. A Bermuda delegation attended the Securities Industry & Financial Markets Association (SIFMA) annual Insurance and Risk Linked Securities Conference in New York. Other conferences and events are also attended to promote the advantages of placing ILS business in Bermuda. In addition, we are confident of another first-class event at the Pier 6 waterfront complex in Hamilton later in the year, which will further cement Bermuda's position as the premier domicile for ILS.

With a record number of ILS vehicles listed, the BSX is assisting Bermuda to firmly establish itself as a centre of excellence for the creation, listing and servicing of the ILS asset class.

Based on the activity so far in 2014, and taking into account the rest of the year's delistings and estimated listings, there is the potential for the year to end up with 145-160 new ILS listings, valued at anywhere between \$16.9bn-\$20.9bn.

The island's longevity in the insurance and reinsurance markets and ILS makes Bermuda an intuitive location: a cottage industry, with critical mass, experience and depth. Bermuda will continue to strive to be a centre of excellence in this space – and the BSX will be there to help. ■

# BREAKING INTO BERMUDA

DAVE REID AND BARRY MAH TELL *HFMWEEK* ABOUT SS&C'S LATEST ACQUISITION OF PRIME MANAGEMENT LIMITED IN BERMUDA



**Dave Reid** is senior vice president and managing director of SS&C's international business, based in London since 2011. Prior to this, he served as co-head of SS&C's global hedge fund administration business. He has more than 30 years of experience in investment services, technology and operations for financial services.



**Barry Mah** is a vice president and country head for Prime Management Limited in Bermuda. Barry qualified as a chartered accountant in 1992 and a chartered financial analyst in 1997. He is a member of the Canadian and Bermuda Institute of Chartered Accountants and the CFA Institute.

**O**n 1 October 2013 SS&C Technologies Inc. (SS&C), a global provider of investment and financial software-enabled services and software focused exclusively on the global financial services industry, acquired Prime Management Limited (Prime).

Prior to the acquisition Prime was a privately owned independent fund boutique administrator serving hedge fund and insurance-linked securities (ILS) managers, from its Bermuda and Canadian offices.

Prime, now a division of SS&C GlobeOp, is licensed as a fund administrator and as an insurance manager, regulated by the Bermuda Monetary Authority. Prime has been recognised as a leading administrator in the rapidly growing ILS industry sector, while servicing a variety of traditional hedge structures, since 1997.

*HFMWeek* speaks to Dave Reid, senior vice president and managing director, International, and Barry Mah, vice president and Bermuda country head at SS&C about how the deal is fairing almost one year on.

**HFMWeek (HFM): What were the key drivers prompting the acquisition?**

**Dave Reid (DR):** The acquisition of Prime provided SS&C the perfect opportunity to enter the Bermuda fund administration sector as the region's financial services market looks to rebuild. The transaction also gives SS&C the opportunity to grow the outsourced asset management services that are currently provided to several Bermuda reinsurers that invest in hard-to-value esoteric securities, as traditional reinsurers seek to enhance investment yield.

With respect to ILS, pension and institutional investors have been attracted to the asset class due to the returns generated, diversification of portfolio exposure and the lack of correlation with other asset classes. The experience and knowledge of the Prime team in servicing the ILS asset managers, along with attention to customer service, is a strategic fit for SS&C's fund administration services. This includes a Bermuda-based regulated entity, fund administration and accounting services specific to ILS with high touch and quality investor governance and compliance services. ILS is here to stay and continues to gain market share from traditional reinsurance products.

In excess of 6,900 financial services organisations across the world manage and account for their investments using SS&C's products and services. These clients in the aggregate manage over \$26trn in assets. Joining our two organisations fits nicely with our global corporate strategy.

There are great synergies within the combined group that will enable us to add further value to our customers and prospects, while expanding our presence geographically. The acquisition positions SS&C as a leading administrator for ILS and funds which invest in them.

**Barry Mah (BM):** Key to the acquisition was the strategic plan to invest, grow and expand our presence in Bermuda. In previous acquisitions of administrators in this region, many have resulted in their local offices shifting all of their work to other lower cost jurisdictions. SS&C GlobeOp plans to invest in the Bermuda regulated jurisdiction. Our goal is to become the preeminent administrator in Bermuda, leveraging SS&C's technology and expertise to deliver best-in-class service to our clients.

**HFM: What are the combined benefits of the new integrated organisation?**

**BM:** Prime continues to benefit from SS&C's excellent reputation for technology solutions, client service, strong financial position, expansive list of products and services across the globe. With SS&C's global presence across 47 offices, Prime can now offer current and future clients specialty ser-

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OUR GOAL IS TO BECOME THE  
PREEMINENT ADMINISTRATOR  
IN BERMUDA, LEVERAGING OUR  
TECHNOLOGY AND EXPERTISE TO  
DELIVER BEST-IN-CLASS SERVICE TO  
OUR CLIENTS  
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vices and reporting for Ucits, German tax reporting, man co support and other domiciliation services. In today's regulatory environment, it has been difficult to keep up with regulations without a significant investment in human resources and technology. Legislation such as Fatca, Form PF and the AIFMD are good examples of such challenges. SS&C continues to invest in IT and service solutions which we can now leverage. Our combined size, strength and stability of-



fer the best opportunity for growth and customer service.

The acquisition has been highly complementary with great synergies and little overlap. It has increased opportunities for existing staff globally with enhanced training resources and access to additional technology. The deal is very much about growth. SS&C now has the ability to win more mandates as a combined global leader in alternative fund administration.

**HFM: What benefits does the combined organisation bring to your clients and investors?**

**DR:** Customer service and delivery continues to be a key focus. The combined teams take great pride in providing experienced relationship managers with high touch, customised services to their clients. We continue to look to leverage technology and automation while providing high quality service and manager/investor transparency, as well as access to data. We have maintained a very high level of staff retention and continuity of service, while providing more offerings, including regulatory reporting.

**BM:** We have seen a good response. Clients and investors benefit from SS&C's standing as a top three global administrator in terms of AuA. Transition and integration has been smooth as SS&C continues to demonstrate dedication to customer service and continuity of the service team, while leveraging industry leading technology. Clients expect, at a minimum, the same high quality service they received prior to the acquisition. Increased services with less investor and manager due diligence is being performed, which is directly attributable to SS&C's well-known reputation and brand.

**HFM: How is the integration and transition going and what has changed since the acquisition?**

**DR:** We are nine months into our first year and the transition has been going very well. We have integrated key corpo-

rate functions like accounting, payroll, human resources, IT networking and infrastructure. We have successfully maintained our staff and clients while winning new mandates and growing our client and revenue base. We are educating and leveraging our global sales and marketing teams with a focus on Bermuda, ILS and hedge fund administration services.

**BM:** We believe our management team and staff are the best in the industry and are very pleased that the team has been kept in place and continues to focus on client service and company growth. We have confidence in SS&C's understanding of our service and market, and have seen staffing levels increase since the acquisition to accommodate current and planned growth. Additionally, we have been able to centralise certain support functions and continue to enhance our product offering by leveraging SS&C technology.

**HFM: What does the future hold for the newly integrated organisation?**

**DR:** Today SS&C is recognised as a leader in the Bermuda jurisdiction. We will continue to support, market and expand the outstanding reputation and unique ILS capabilities of the firm.

**BM:** The deal has really strengthened SS&C as a leading Bermuda administrator and Bermuda as a jurisdiction. In late 2013, Bermuda modernised its fund legislation by creating a new investment fund class whereby a fund can be registered and launched in literally one day, subject to meeting certain requirements. This has resulted in Bermuda being one of the most efficient and cost-effective jurisdictions to domicile an offshore fund. With this new fund legislation we believe Bermuda will be able to attract more new fund formations in the near future and SS&C is well positioned to capitalise on this trend. ■

# WORKING WITH YOU TO ACHIEVE THE RESULTS YOU NEED

CHW's corporate team advises on the establishment and regulation of asset managers and investment fund vehicles and our dispute resolution team provides advice in relation to investment fund litigation.

CHW is widely recognized as one of Bermuda's leading commercial law firms. Our firm and its attorneys have a proven track record of:

- providing outstanding service to our clients
- demonstrating superior expertise on matters of Bermuda law and practice
- taking a pragmatic and commercial approach to meeting our clients' needs and exceeding their expectations

We don't focus on being the biggest; we focus on delivering the best.

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Alternative asset managers are now playing on a field marked by turbulent markets and complex regulatory reform. In this environment, a trusted advisor with a balanced, comprehensive and international perspective can be an invaluable resource.

As a leading provider of business solutions to the asset management industry in Bermuda, PwC is that advisor.

To find out how PwC's advisory, audit and tax services can help you, contact:

Scott Watson-Brown, Asset Management Leader  
scott.watson-brown@bm.pwc.com  
1 441 299 7156

Richard Irvine, Tax Leader  
richard.e.irvine@bm.pwc.com  
1 441 299 7136